

# **EXHIBIT A**

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----X

3 In Re: New York City Policing During Summer  
4 2020 Demonstrations,

Index No.:

5 20-cv-8924 (CM) (GWG)

6 20-cv-10291 (CM) (GWG)

7 20-cv-10541 (CM) (GWG)

8 21-cv-322 (CM) (GWG)

9 21-cv-533 (CM) (GWG)

10 21-cv-1904 (CM) (GWG)

-----X

11 April 13, 2023

12 10:41 a.m.

13  
14  
15  
16  
17  
18  
19 VIRTUAL DEPOSITION OF LAUREN FOSTER, the  
20  
21 Witness, pursuant to Subpoena, taken at the above  
22  
23 date and time, before MARIA ACOCELLA, a Notary  
24  
25 Public within and for the State of New York.

1           A P P E A R A N C E S:

2  
3           STATE OF NEW YORK  
4           OFFICE OF THE ATTORNEY GENERAL  
5           LETITIA JAMES

6           Attorney for Plaintiff  
7           28 Liberty Street  
8           New York, New York 10005

9           BY: LILLIAN MARQUEZ, ESQ.  
10           GINA BULL, ESQ.

11           SYLVIA HINDS-RADIX, ESQ.  
12           Corporation Counsel  
13           Attorneys for Defendants  
14           100 Church Street  
15           New York, New York 10007

16           BY: ELISSA JACOBS, ESQ.

17           ALSO PRESENT: Matthew Russo, NYPD Legal

18           Maggie Hadley, Esq., Payne Plaintiffs

19           Remy Scott, Esq.

20           Mickey Osterreicher, Esq.

21           Tahanie Aboushi, Esq.

22           Maleeha Riaz, Fellow, Cohen Law Firm  
23  
24  
25

1                   Lauren Foster

2                   MS. JACOBS: Objection, outside  
3                   the scope.

4                   A.           I don't know if this is the first  
5                   version.

6                   Q.           Okay. Do you have an  
7                   understanding as to when it was first  
8                   implemented?

9                   MS. JACOBS: Objection, outside  
10                  the scope.

11                  A.           No. It was implemented while I  
12                  was at --

13                  No. Actually, I don't know.

14                  Q.           I am going to skip ahead to page  
15                  8, and if I draw your attention to the second  
16                  paragraph here, starting with -- rather, the  
17                  last two sentences in that second paragraph.

18                  So IAB may assign some misconduct  
19                  investigations to the bureau/borough  
20                  investigation units, which function as  
21                  satellites of IAB and are responsible for the  
22                  integrity controls within their respective  
23                  units. These investigation units report  
24                  their findings through IAB, which retains  
25                  oversight over the investigations.

1                   Lauren Foster

2                   Do you see that?

3           A.       Yes.

4           Q.       Okay. And this is 2021.

5                   So was it your understanding that  
6 the IAB retains oversight over investigations  
7 conducted by bureau/borough investigation  
8 units at the time?

9           A.       So the borough/bureau  
10 investigation units, my understanding is they  
11 fall under chief of department investigations  
12 review section.

13                   IAB did conduct steering with  
14 them, but as far as -- and would provide  
15 some -- would provide guidance.

16                   However, as far as signing off on  
17 cases, the sign-off was done not by IAB  
18 personnel.

19                   I guess it is how you define --  
20 those are two different versions of  
21 oversight, I guess.

22           Q.       So what do you mean by conducted  
23 steering with them?

24           A.       So steering is a meeting where  
25 executive -- well, executives from IAB, and

1                   Lauren Foster

2       if it is an IU, elsewhere -- they sit down  
3       and they go through current cases, and it is  
4       a formal case review.

5           Q.       What are they reviewing for?

6           A.       Just status of cases, next steps,  
7       investigative gaps, things of that nature.

8           Q.       Would the IAB executives in that  
9       meeting be able to dictate to the IUs what to  
10      do next, or simply suggest next steps?

11          A.       I don't know what the  
12      consequences of not doing a suggested step  
13      would be.

14          Q.       And what level of executives  
15      would be involved in those meetings?

16          A.       Those were usually -- Chief  
17      O'Neill would sometimes go to them, if he was  
18      available, chief Cooper.

19          Q.       Sorry. Who was that, Cooper?

20          A.       Cooper, Alan Cooper.

21          Q.       What was his rank?

22          A.       Deputy Chief.

23          Q.       Did you attend any of those  
24      meetings?

25          A.       No.

1                               Lauren Foster

2               A.           Yes.

3               Q.           Okay. And I kind of tabled that,  
4 because I think it would have been just  
5 easier to talk about a specific case rather  
6 than in the abstract.

7                               So I am going to pull up a case.  
8 I think you mentioned having reviewed it, but  
9 I may have -- you may have given a different  
10 first name.

11                              Did you review a case file  
12 involving Jason Donnelly?

13               A.           Oh, yeah. I think I called him  
14 James.

15               Q.           But it was Jason?

16               A.           Donnelly, yes.

17               Q.           Are you familiar with the conduct  
18 of the investigation on the IAB side of those  
19 allegations relating to him?

20               A.           Somewhat.

21                              I would be more comfortable  
22 looking through the case again.

23               Q.           Sure.

24                              MS. MARQUEZ: So I think we are  
25 at 13?

1                   Lauren Foster

2                   MS. JACOBS:   Yes.

3                   MS. MARQUEZ:   And so this was  
4                   produced -- actually, this is a publicly  
5                   filed docket document.   It is a docket  
6                   number 116-1, filed in Federal Case  
7                   21-cv-6610, and so I will just show it  
8                   to you.

9                   MS. JACOBS:   Where is the case  
10                  filed?

11                  MS. MARQUEZ:   It is, I think, one  
12                  of the consolidated cases here, but it  
13                  was an independent, not in the main  
14                  case.

15                  So it is one of Judge McMann's.  
16                  So is this -- this is essentially the  
17                  CCRB conclusions as documented in a  
18                  letter to the complainant.

19                  (Whereupon, a document was marked  
20                  as Foster Exhibit 13 for identification,  
21                  as of this date.)

22                  Q.           Have you seen this before,  
23                  Captain?

24                  A.           No.

25                  Q.           Have you seen a document like



1                                   Lauren Foster

2       this before?

3                   A.           Yes.

4                   Q.           What do you understand this  
5       generally to be?

6                   A.           It is a communication to a  
7       complainant from CCRB regarding the outcome  
8       of CCRB's investigation.

9                   Q.           And I just wanted to show you, to  
10      contextualize our conversation about the IAB  
11      case, which I will show you a second.

12                               So this is Jason Donnelly again,  
13      correct?

14                  A.           Yes.

15                  Q.           And just going to scroll down to  
16      the force allegation.

17                               So on page 2 at the top, subpart  
18      G, force, Sergeant Christopher Hewitson used  
19      physical force against Jason Donnelly.

20                               And it says that that was  
21      substantiated and resulted in charges.

22                               Is that fair to say, just based  
23      on your review what you are seeing in front  
24      of you?

25                  A.           That is what it says.

1                   Lauren Foster

2                   MS. MARQUEZ: And then show you  
3                   what will be Foster 14. That was  
4                   produced as DEF\_000481742 to 745.

5                   Sorry, just one second.

6                   So do you mind if we go off the  
7                   record real quick to get that document?

8                   (Whereupon, a short recess was  
9                   taken at 4:08 p.m. and testimony resumed  
10                  at 4:09 p.m.)

11                  MS. MARQUEZ: Sorry about that.

12                  So this will be Foster 14, same  
13                  Bates Stamps that I provided before.

14                  (Whereupon, a document was marked  
15                  as Foster Exhibit 14 for identification,  
16                  as of this date.)

17                  Q.           Do you see that?

18                  A.           Yes.

19                  Q.           I will just scroll through it  
20                  again.

21                  Have you had a chance to look  
22                  at -- at least scan this?

23                  A.           Yes.

24                  Q.           Okay. And have you reviewed this  
25                  before?

1                           Lauren Foster

2           A.       Yes.

3           Q.       And this is the ICMT log for --  
4           or I guess, record for Jason Donnelly's  
5           allegations?

6           A.       It is not the log, no.

7           Q.       The case is that --  
8                    How would you describe it?

9           A.       This is the closing worksheet.

10          Q.       Closing work sheet, okay.

11                   And it is in ICMT because the  
12          group in charge of this investigation was  
13          Patrol Borough Manhattan South?

14          A.       Yes, Patrol Borough Manhattan  
15          South Investigations Unit.

16          Q.       Okay. Do you know the reason why  
17          it was being investigated by that  
18          investigation unit specifically?

19          A.       This was one of the cases where  
20          after an attempt to identify the subject  
21          officer, to make it -- to determine what --  
22          where the appropriate investigative entity  
23          resided, they -- within a short time period,  
24          they were unable to.

25                   So it was then assigned to Patrol

1                   Lauren Foster

2       Borough Manhattan South, because the incident  
3       occurred geographically there.

4           Q.       Okay. Got it.

5                   So for this particular incident,  
6       is it accurate to say the IAB was just  
7       looking at allegations three to five -- the  
8       IAB was investigating allegations of physical  
9       force?

10          A.       You would have to slowly go  
11       through it before I can accurately say that.

12          Q.       So let's go one by one.

13                   Allegation three, force, physical  
14       force?

15          A.       What are one and two?

16          Q.       Oh, they are not force or  
17       physical force; that is why I wasn't focusing  
18       on those.

19          A.       Oh, okay.

20          Q.       Or one is, but it is referred out  
21       to CCRB.

22          A.       Okay.

23          Q.       Yeah. So I just wanted to focus  
24       on three to five.

25                   So just on three, let's start

1                   Lauren Foster

2       with, it says force, physical force, and then  
3       allegation index other. Do you see that?

4           A.       Uh-huh.

5           Q.       Why is the allegation index other  
6       for that?

7           A.       I am not sure.

8           Q.       And just to contrast, allegation  
9       four, if you see it, use of force level two  
10      has an allegation index of force  
11      investigation notification?

12          A.       Correct.

13          Q.       Do you know why the two are  
14      distinct?

15          A.       Because level two is -- in the  
16      world of NYPD force, you have level one, two,  
17      three, four. And when you have a force  
18      allegation, it is not just one allegation, it  
19      gets broken up into different pieces to  
20      account for different elements, different  
21      potential outcomes.

22                   One active force may result in  
23      multiple different allegations.

24                   And a level -- and a use of force  
25      hyphen level two, one, three, whatever it is,

1                   Lauren Foster

2       the index ends up being force investigation  
3       notification.

4           Q.       Okay. So for the allegation  
5       four, do you see the comments where it says  
6       allegations closed as unsubstantiated, based  
7       on the video provided by the complainant? If  
8       any force was used against him, it was not  
9       captured, presumably captured. Inquiries of  
10      BWC footage resulted in no BWC footage being  
11      found, so the allegation cannot be proven or  
12      disproven.

13          A.       Right.

14          Q.       One question for you, the comment  
15      that the allegation cannot be proven or  
16      disproven, is that a necessary conclusion, if  
17      the victim is providing their account that  
18      they had, in fact, been -- that force had  
19      been used against him by a member of service?

20          A.       It is not a necessary conclusion,  
21      but I don't know -- this is just a closing  
22      statement, the closing worksheet, so it  
23      doesn't give me enough information to  
24      determine what other investigative steps were  
25      taken to reach this conclusion.

1                   Lauren Foster

2           Q.       Okay. But does the fact that  
3       there is, for instance, no body worn camera  
4       footage, meaning that an allegation that by  
5       complaining witness or victim that an officer  
6       used force against them cannot be proven is  
7       not a necessary conclusion simply 'cause  
8       there is no video?

9           A.       No. No.

10          Q.       I just want to focus on this  
11       right here, so start -- this paragraph, I  
12       don't know if you can see me highlighting it?

13          A.       Uh-huh.

14          Q.       And this is on page 3?

15          A.       Yes.

16          Q.       So Sergeant Taylor was  
17       interviewed, and in sum and substance, he  
18       stated he did mark the job, but he was never  
19       approached by the complainant, and he does  
20       not know who Mr. Donnelly is.

21                   Sergeant Taylor added that the  
22       reason why he did not activate his body worn  
23       camera at the time at the location was  
24       because there was a large demonstration going  
25       on, which we do not record.

1                   Lauren Foster

2                   So just to that question of  
3                   Sergeant Taylor's assertion that large  
4                   demonstrations are not recorded per NYPD  
5                   policy presumably; is that accurate?

6                   MS. JACOBS:   Objection, outside  
7                   the scope.

8                   A.           There are officers who are  
9                   confused about the application of camera, and  
10                  that seems to be the case here.

11                  MR. MARQUEZ:   I will concede, it  
12                  is outside the scope.

13                  Q.           I just wanted to lay that  
14                  question down so I could ask you the  
15                  follow-up, which is, this sort of testimony  
16                  is presented to an investigator in the course  
17                  of their investigation does not appear to be,  
18                  you know, related directly to the allegation  
19                  that started the investigation, but could an  
20                  IAB investigator hear that testimony and, you  
21                  know, would it warrant opening another log  
22                  for failing to activate body worn camera  
23                  footage, for instance?

24                  A.           No.

25                  MS. JACOBS:   Objection.



1                   Lauren Foster

2                   You can answer.

3           Q.       Why not?

4           A.       Not necessarily.

5                   In this case -- in a case like  
6 this, where the reason provided, while  
7 misguided, perhaps is not unreasonable.

8                   This is more of a teaching  
9 moment, if you will, that an internal  
10 investigation regarding serious misconduct or  
11 corruption, so.

12          Q.       Okay.

13                   MS. MARQUEZ: And then just one  
14 more on this, so it will be Foster 15.  
15 I apologize, because I appear to have  
16 misplaced some of these.

17                   It was produced as  
18 OAG-0324767-771, okay?

19                   And yes, this is Foster 15. I am  
20 going to share my screen again.

21                   (Whereupon, a document was marked  
22 as Foster Exhibit 15 for identification  
23 as of this date.)

24          Q.       I just represent to you that this  
25 is an internal document to the CCRB relating

1                   Lauren Foster

2       to their own investigation of the same  
3       allegations by Jason Donnelly.

4                   I just want to focus, after I  
5       scroll through this, to communications  
6       documented by the CCRB investigator of  
7       communications with the IAB investigator, but  
8       just want to make sure you see the document  
9       first.

10                   Were you able to look through all  
11       of that?

12           A.       No.

13           Q.       At least see that this is a  
14       document that is five pages long?

15           A.       Yes.

16           Q.       I am going to focus your  
17       attention to page -- this last page,  
18       actually.

19                   So I am just going to read the  
20       entry at 586, called PBMS investigations at a  
21       particular phone number Sergeant Wong  
22       answered.

23                   Sergeant Wong confirmed that she  
24       has not been able to identify the subject  
25       sergeant, even after her recent GO 15

1                               Lauren Foster

2       interview of Sergeant Taylor and Sergeant  
3       Taylor's driver.

4                               What is -- I just want to pause  
5       there.

6                               What is a GO 15 interview?

7               A.           It is the same thing as PG  
8       206-13. It is the authority under which the  
9       ability to conduct the compelled testimony  
10      exists. And prior to the creation of 206-13,  
11      it was known as a GO 15, so they are  
12      interchangeable.

13           Q.           Okay. Thank you.

14                           And then I am to going skip down  
15      to this last sentence. Sergeant Wong advised  
16      that the rosters of possible sergeants  
17      attached to her case file total approximately  
18      300 sergeants. It was unclear how the  
19      universe came to be narrowed to that number.

20                           So one of my questions to you is,  
21      you know, how does an IAB investigator go  
22      about narrowing the potential sergeants who  
23      might be involved in a particular incident?

24           A.           First, I would -- Sergeant Wong  
25      is not an IAB investigator.

1                   Lauren Foster

2           Q.       Is she an investigation unit  
3 investigator --

4           A.       Yes.

5           Q.       -- who is trained by the IAB?

6           A.       Not trained.

7                   Well, they do receive some  
8 training, yes.

9           Q.       Okay. I guess independent of  
10 Sergeant Wong, how would an IAB investigator  
11 go about narrowing the field?

12          A.       From what to what?

13          Q.       From the 300 sergeants to the  
14 possible sergeant who is alleged to have used  
15 force against this individual?

16          A.       It depends on what the -- what  
17 description is available of the potential  
18 subject sergeant.

19          Q.       Okay. And just if you could  
20 remind me, for investigation units -- and I  
21 know this has changed perhaps, since at the  
22 time of the protests, though investigation  
23 unit investigators were supervised by who?

24          A.       They fell under chief of  
25 department investigation review section, and

1                   Lauren Foster

2       then in some capacity, IAB had oversight.

3           Q.       What was the extent of that  
4       oversight?

5           A.       They conducted steering assigned  
6       case.

7                   They did not sign off on their  
8       cases.

9           Q.       Okay. So I just want to move to  
10      a different part of this log by the CCRB  
11      investigator at the top of page 5.

12                   MS. JACOBS: Lillian?

13                   MS. MARQUEZ: Yes.

14                   MS. JACOBS: That is fine.

15                   But I do want to say, I am going  
16      to put in front of her, or have  
17      available to her, the ICMT case  
18      regarding Jason Donnelly.

19                   It is on my computer, but it is  
20      something that she reviewed, so.

21                   MS. MARQUEZ: I think -- is that  
22      the one that we just looked at?

23                   MS. JACOBS: No, it is much  
24      longer than that.

25                   MS. MARQUEZ: Okay. I will take

1                   Lauren Foster

2           this opportunity to call for production,  
3           to the extent it hasn't been produced,  
4           because I think the one I showed is the  
5           one I have.

6                   MS. JACOBS: I just ask that it  
7           be put in writing.

8                   MS. MARQUEZ: Okay. Understood.

9           Q.       So just to focus on these  
10          entries, Captain, 580, 581 and 582, there is  
11          reference to a Sergeant Hewitson, who  
12          ultimately was indicted as the subject  
13          officer in the CCRB case.

14                   So my question just to you -- and  
15          I understand that this is an investigation,  
16          unit investigator, but do IAB investigators  
17          interface with CCRB investigators in the same  
18          way as this document is suggesting that CCRB  
19          investigators interfaced with investigation  
20          unit investigators?

21                   MS. JACOBS: Objection, outside  
22          the scope.

23          A.       Yeah, I am not sure.

24                   This seems to be a lot of  
25          interfacing.

1                   Lauren Foster

2                   I don't know -- I don't know how  
3 common this level of interaction is.

4           Q.       Okay. Would, for instance, an  
5 IAB investigator know if a CCRB investigator  
6 has identified a subject officer?

7           A.       Not necessarily, unless the CCRB  
8 investigator shared that information.

9           Q.       Okay. So it is not as a matter  
10 of course that the two are sharing  
11 information in that way?

12          A.       No.

13          Q.       Okay. And I guess as an  
14 extension of that, would they -- as a matter  
15 of protocol, or in practice, an IAB  
16 investigator let a CCRB investigator know  
17 when they are going to do an interview of a  
18 particular officer?

19          A.       No, that wouldn't be.

20          Q.       Or the vice versa, are you aware  
21 of CCRB investigators giving heads up in that  
22 way to the IAB?

23          A.       That would not be common.

24          Q.       Okay. Okay. Is there any  
25 other -- can you describe the general sense

1                                   Lauren Foster

2       of or level of cooperation between the two  
3       when they are both investigating the same  
4       incident?

5                           MS. JACOBS:   Objection.

6                           You can answer.

7           A.           They are pretty independent of  
8       each other.

9           Q.           Is there any level of cooperation  
10       that is like baseline, that always happens  
11       where again, they are both investigating the  
12       same incident?

13                       MS. JACOBS:   Objection.

14                       You can answer.

15       A.           Not that I know.

16       Q.           Okay.

17                       MS. MARQUEZ:   I am going to take  
18       this down, and just move to a few -- it  
19       is going to be jumping around a little  
20       bit, 'cause I am closing up, so forgive  
21       me. I am going to jump topics.

22       Q.           But just for IAB complaints,  
23       what -- is there a statute of limitations  
24       that applies to IAB investigations of  
25       administrative violations?